

Exhibit C

Jimmy W. Mays, Ph.D.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION
4
5

6 -----x
 IN RE: COLOPLAST CORP.) Master File No.
7 PELVIC SUPPORT SYSTEMS) 2:12-MD-02387
 PRODUCTS LIABILITY LITIGATION) MDL No. 2387
8 _____)
9 THIS DOCUMENT RELATES TO:)
)
10 ALL COLOPLAST WAVE 5, 6 AND 7)
 CASES)
11 _____x

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DEPOSITION OF JIMMY W. MAYS, Ph.D.

17

NAPLES, FLORIDA

18

FRIDAY, APRIL 26, 2019

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9:03 A.M.

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21

22 Job No.: 214446

23 Pages: 1 - 325

24 Reported by: Leslie A. Todd

Jimmy W. Mays, Ph.D.

1 Deposition of JIMMY W. MAYS, Ph.D., held in
2 the conference room at:

3

THE RITZ-CARLTON GOLF RESORT

4

2600 Tiburon Drive

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Naples, Florida 34109

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9 Pursuant to notice, before Leslie Anne Todd,
10 Court Reporter and Notary Public, who officiated
11 in administering the oath to the witness.

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Jimmy W. Mays, Ph.D.

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1 P R O C E E D I N G S

2 -----

3 JIMMY W. MAYS, Ph.D.,

4 and having been first duly sworn,
5 was examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR DEFENDANT

7 BY MR. STEIMLE:

8 Q Good morning, Dr. Mays.

9 A Good morning.

10 Q Could you state your name for the
11 record, please.

12 A Jimmy Wayne Mays.

13 Q We introduced ourselves off the record.

14 My name is Wes Steimle. I'm an attorney for
15 Coloplast. My colleague here is Oliver Thoma.

16 And we met Mr. Perdue, as well, off the record.

17 Is there any reason that you cannot give
18 complete and truthful testimony today?

19 A No.

20 Q And you've had your deposition taken
21 before?

22 A Yes.

23 Q Several times?

24 A Yes.

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1 A I haven't had more.

2 Q Well, that's not my question. Have they
3 offered to give you any more?

4 A No.

5 Q Have you asked for any more?

6 A Yes, in fact, I have. I have told
7 attorneys, you know, I would be happy to test
8 more.

9 Q Okay. And what did they tell you in
10 response? They don't have any?

11 A Usually they don't have any.

12 Q Okay. Other than "usually," is there
13 anything --

14 A I've never -- I've never been denied.

15 Actually, I will say this: You have to
16 have enough material to do the testing.

17 Oftentimes the amount of material that's available
18 is so small. I'm looking for materials where
19 there is a substantial amount that I can do pretty
20 extensive testing on it.

21 Q The Imel article is the only article
22 that you've published on the purported degradation
23 of polypropylene surgical mesh in implants; is
24 that right?

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1 A I believe that's correct, yes.

2 MR. STEIMLE: I'm just going to go ahead
3 and mark that as the next exhibit.

4 (Exhibit No. 11 was marked for
5 identification.)

6 BY MR. STEIMLE:

7 Q I've handed you what we marked as
8 Exhibit 11. And, just for the record, this is the
9 Imel, et al., 2015 article that we talked about.

10 A Yes, it is.

11 Q And this is the one that you were the
12 coauthor on and performed some of the
13 experimentation in?

14 A Yes.

15 Q This says it was published in a journal
16 called Biomaterials. Is that correct?

17 A Yes.

18 Q What kind of a publication is that?

19 A It's generally considered to be the top
20 peer-reviewed journal in the area of biomaterials.

21 Q And what would you call biomaterials?
22 How would you define that, sort of broadly
23 speaking?

24 A Broadly speaking, those are materials

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1 that are used in biological environments or they
2 might also be things like biopolymers that occur
3 naturally in the body. But -- but generally, it's
4 oriented towards materials that are used in
5 biological application.

6 Q Naturally occurring biopolymers, things
7 like proteins?

8 A Yes.

9 Q Okay. And so I would imagine a large
10 part of the focus is about implants in that
11 journal.

12 A That's a substantial portion, yes.
13 Implants. You would run into things like
14 restorative dentistry. You would run into things
15 like tissue engineering.

16 Q Is Biomaterials a publication that is
17 regularly circulated among polymer chemists?

18 A Yes.

19 Q Okay. Those that are interested in
20 biomaterials as well as just chemistry? I mean if
21 you're just a chemist, so to speak, or not so much
22 interested in the biosphere, would you still look
23 at a journal like this?

24 A If you were a physical chemist

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1 interested in ultrafast spectroscopy, you probably
2 wouldn't read Biomaterials, but if you were an
3 organic chemist or a polymer chemist developing
4 materials that might have potential applications
5 as biomaterials, you would read it.

6 Q So if you were helping to develop a
7 longer lasting bone cement, for example --

8 A Absolutely. Absolutely.

9 Q -- that would be something you would
10 look at?

11 A Yes, sir.

12 Q Was this article that we've marked as
13 Exhibit 11, was it peer-reviewed by Biomaterials?

14 A Yes.

15 Q And how do you know that?

16 A They have all of their submissions peer
17 reviewed, and when you submit a paper to the
18 journal, you receive the reviewers' comments. And
19 when you receive those reviewers' comments, you
20 get a letter from the editor, and they say, Your
21 paper is rejected because of these comments or
22 your paper is accepted because of these comments.
23 Those are the two extremes obviously. Usually
24 what you get is a letter saying, Please consider

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1 the reviewers' comments and revise your manuscript
2 accordingly.

3 Q Okay. And it looks like that might have
4 happened with the submission of this paper to
5 Biomaterials; is that correct?

6 A That's correct.

7 Q That's reflected in the article info on
8 the first page, the article history; is that
9 right?

10 A Yes, it is.

11 Q It looks like it was received by
12 Biomaterials May 3rd of 2015; is that right?

13 A That's correct, yes.

14 Q Is that when you submitted it?

15 A Must have been.

16 Q Okay. No reason to think that's
17 inaccurate?

18 A Absolutely correct.

19 Q And then it says, "Received in revised
20 form 3 September 2015." Do you see that?

21 A Right.

22 Q What comments were received back? I'm
23 assuming there were some.

24 A There were. They were minor, very

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1 minor.

2 Q Do you recall what they were?

3 A No, honestly, I don't. I'd have to go
4 back and pull them out. But it didn't take very
5 long to address the comments of the reviewers.
6 And in fact, the editor told me that because of
7 the fact that this was a paper where we
8 acknowledge in the acknowledgments that it was
9 conducted in litigation, before the manuscript
10 goes out for review, the editorial board
11 themselves, the editorial advisory board members
12 look at the paper to establish merit, and they
13 decided it was meritorious, they then sent it out
14 for peer review, we got peer review back, minor
15 revisions were made, and the paper was probably
16 accepted after we did that.

17 Q All right. But you don't recall what
18 those revisions were?

19 A I don't.

20 Q Do you recall if they related to any of
21 the testing that you had done versus some of the
22 other coauthors?

23 A I don't.

24 Q Is there a record of the comments

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1 anywhere?

2 A I might be able to go back and find
3 them.

4 Q Where would they be?

5 A Maybe I have e-mail that far back. I
6 don't know.

7 Q All right. Outside of that, would there
8 be any way to find the comments, to your
9 knowledge?

10 A No.

11 Q Would I be able to go to Biomaterials
12 and find them?

13 A I don't think they would do that.

14 Q They wouldn't hand them out or they
15 wouldn't keep them, or what?

16 A They wouldn't keep them or -- I don't
17 know. But I doubt they would turn them over to
18 you.

19 Q Do you know who the peer reviewers were?

20 A No. The peer review process is
21 confidential in almost all cases. And since the
22 editorial advisory board provided some sort of
23 screening, we could maybe identify who some of
24 those individuals were. But the D. F. Williams,

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1 who is the name on a couple of those papers that I
2 brought in this morning, he was the
3 editor-in-chief of Biomaterials at the time we
4 were submitting the manuscript.

5 Q And are you familiar with Mr. Williams?

6 A I don't believe I've met him personally,
7 but certainly I'm familiar with his reputation.
8 He's -- he's very -- very well known in the area
9 of biomaterials and polymer biomaterials.

10 Q Have you met any of the advisory board,
11 the editorial advisory board of Biomaterials, at
12 least as they were constituted at the time you
13 submitted this article?

14 A I don't know. I simply did not go look
15 up who they were at that time. You know, I -- I
16 know people like Buddy Ratner, Allan Hoffman, Jack
17 Lemons, you know, the types of folks that might
18 well be on there, but, you know, I don't know.

19 Q Those folks you just mentioned who were
20 all your editors or authors on -- on the Ratner
21 book, the Biomaterials Science book --

22 A Yes. Yes.

23 Q -- do you know those fellows personally?

24 A I know Allan Hoffman. I've met Buddy

Jimmy W. Mays, Ph.D.

1 Ratner a few times. I know Jack Lemons very well.

2 Very nice fellow.

3 Q And you said he worked at Tennessee with
4 you?

5 A He was at UAB.

6 Q Oh, UAB.

7 A I think he's retired now. He was
8 getting up in years at the time I left UAB, and
9 that was at the end of 2001.

10 Q Do you know -- understanding it's
11 confidential, but do you know if the reviewers
12 were polymer chemists?

13 A Since I don't know who the reviewers
14 are, how can I say what kind of chemists they
15 were?

16 Q Well, they might have provided that kind
17 of information. I don't know.

18 So you would have no way of knowing what
19 sort of expertise that the reviewers of this
20 Exhibit 11, Imel, et al., paper, actually had?

21 A I disagree, and I disagree strongly.

22 We passed peer review by the editorial
23 advisory board at the top Biomaterials journal in
24 the world, and we also passed the peer review

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1 process at that same journal. They've got a
2 rigorous process. You can -- you can bet that the
3 people that were reviewing the paper were
4 competent and highly qualified.

5 Q But in what field, you're not -- you're
6 not able to determine?

7 A Well, obviously, when an editor sends
8 out a paper, they send it to people that have
9 expertise. That's the editor's job that's
10 handling the manuscript, to look at the content
11 and to choose reviewers that are experts in that
12 area.

13 So they wouldn't send a paper like this
14 to someone that was working in metal, some sort of
15 metal implant. Okay. Obviously metals are used
16 as biomaterials. Ceramics are used as
17 biomaterials. They would have sent the paper to
18 someone that's knowledgeable in polymer
19 biomaterials.

20 Q Okay. And knowledgeable about polymer
21 chemistry?

22 A Certainly at some level, yes.

23 Q And about the type of testing that was
24 done in this --

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1 A Yes.

2 Q -- in this article?

3 A Yes. That's what competent peer
4 reviewing is about. The editor making those
5 judgments, making sure they get in the hands of
6 the right people.

7 And I remember enough from the
8 reviewers' comments, yeah, the -- obviously
9 they're people that read the paper and knew what
10 we were talking about.

11 Q And how are you able to say that,
12 though? I mean what was -- what were the
13 comments?

14 A I can't remember the specific comments,
15 but only very minor revisions were required.

16 Q Was Biomaterials the only publication
17 that this article was submitted to?

18 A Yes. I simply decided to send it to the
19 best journal in the field.

20 Q Actually, can we turn to page 141 of
21 Exhibit 11. And I think you've touched on this.
22 It's under the section Acknowledgments.

23 A Yes.

24 Q It says: "This study was initially

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1 conducted in litigation and sponsored for
2 claimants against Boston Scientific Corporation."
3 Correct?

4 A Yes.

5 Q This was -- the testing that was done
6 and reflected in this Exhibit 11, the Imel,
7 et al., article, was part of a report that you
8 submitted prior to this article in the Boston
9 Scientific litigation. Is that true?

10 A Yes.

11 Q All right. And you were deposed upon
12 that?

13 A Yes.

14 Q Okay. And the testing and the opinions
15 from the report in the Boston Scientific
16 litigation ultimately made it into this Imel,
17 et al, article subsequently.

18 A Yes.

19 Q Okay. There's no new testing reflected
20 in this article that wasn't also in your report
21 for the Boston Scientific litigation. Is that
22 true?

23 A I believe there's some additional data
24 in here that was on exemplars.

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1 Q What does that mean?

2 A Material that was never implanted,
3 pristine material right out of the package. I
4 believe there is some additional data here on the
5 exemplars that maybe wasn't in the initial report
6 that was filed in the Boston Scientific case.

7 Q And what kind of data about that
8 pristine material would that be?

9 A It would be just the testing according
10 to these different methods that we used here,
11 SEM/EDS, FTIR, GPC, et cetera.

12 Q So that if I understand correctly, the
13 report that you submitted in the Boston Scientific
14 litigation did not have the pristine or unused
15 mesh samples?

16 A No, it did, but it only had Pinnacle
17 and -- what's the other one? -- Obtryx. In this
18 paper, I believe we tested all of the different
19 exemplars just to basically see if they were all
20 made of the same material and had similar --
21 similar molecular characteristics and similar
22 spectra.

23 Q And when you say all of the materials,
24 you mean everything that was in Boston

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1 Scientific's inventory, for lack of a better term,
2 for this particular type of pelvic reconstructive
3 surgeries?

4 A I believe that's correct, sir. And if I
5 can direct you to Table 1 on page 132, you will
6 see them listed here.

7 Q Is that the only difference in terms of
8 the testing that was performed between the report
9 you submitted in the Boston Scientific litigation
10 and this paper, to your knowledge?

11 A I -- I think so, yes.

12 Q Okay. In that Boston Scientific
13 litigation, you're aware that you were excluded
14 from presenting the testing that had been done
15 that was subject to the report in the Boston
16 Scientific litigation, correct?

17 A Yes.

18 Q All right. And had you read the judge's
19 opinion on that?

20 A I don't think so.

21 Q Why not?

22 A You know, I don't go looking for what
23 judges are saying.

24 Q You weren't curious about what it is

Jimmy W. Mays, Ph.D.

1 that he might have said or --

2 A I don't go Google around for things like
3 that. I don't go Google around my name.

4 Q Are you aware that the opinions that you
5 were allowed to present as an expert at trial were
6 limited to items that you had read in the
7 literature as well as your training and
8 experience, but not the testing that had been
9 done?

10 MR. PERDUE: Form.

11 MR. STEIMLE: I'll rephrase it.

12 BY MR. STEIMLE:

13 Q Do you know what limitations the judge
14 put on your testimony --

15 A The specific --

16 Q -- in the Boston Scientific litigation?

17 A The specific limitations, no. I do
18 recall very clearly in my first Boston Scientific
19 depo that they were taking great pains and many
20 hours to try to discredit our data as
21 cherry-picking and -- and litigation driven. And
22 I guess ultimately they may have persuaded the
23 judge of that. But, you know, we published those
24 same data, as we just discussed, in the top peer-

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1 review journal in the biomaterials area.

2 Q Let me ask you about that.

3 Did you advise the Biomaterials journal
4 that your work had been excluded in a court?

5 A I did not.

6 Q Why not?

7 A It was not relevant.

8 Q Why not?

9 A A judge's opinion is not relevant to
10 peer review at a scientific journal. I did what I
11 needed to do in terms of this being work that was
12 done in litigation, and that's that acknowledgment
13 that you see at the end of the paper.

14 I know as a person that's reviewed
15 literally thousands of papers myself, I wouldn't
16 be swayed one way or another -- it would be
17 totally irrelevant to me whether or not data had
18 been excluded in litigation by a judge.

19 Q As a polymer chemist, it would be
20 irrelevant?

21 A No, as a scientist determining whether
22 or not a paper submitted by another scientist is
23 worthy of peer review or not.

24 Q Okay. But whether a judge would exclude

Jimmy W. Mays, Ph.D.

1 any opinion of yours and the reasons therefor may
2 not be relevant to science, but would it be
3 relevant to your work consulting as an expert?

4 MR. PERDUE: Form.

5 THE WITNESS: Obviously, if a judge says
6 that I can't rely on such data as I formulate
7 opinions and express those opinions in a court of
8 law, then, yes, it would affect it.

9 BY MR. STEIMLE:

10 Q All right. Even after you had published
11 the Imel, et al., article in Biomaterials, were
12 you ever allowed in any court so far to testify
13 about the testing that was done in there?

14 A I have not been called upon in court to
15 rely on my testing explicitly.

16 Q Have you testified in court since the
17 bio -- or since the Boston Scientific litigation
18 in Tyree?

19 A As I mentioned, when we started talking
20 this morning, after Tyree -- well, Tyree was --
21 which one? Tyree was the one that was in West
22 Virginia, the day before I testified in a trial in
23 Miami. And then approximately five months -- I'm
24 guessing approximately five months later, I

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1 testified in LA in Sanchez, et al.

2 Q And in the Miami trial testimony or the
3 Los Angeles trial testimony, did you discuss the
4 testing that was the subject of this Imel, et al.,
5 report?

6 A I did not present those data, that's
7 correct.

8 Q All right. And was that because of
9 limitations by the court as to what you could say?

10 MR. PERDUE: Form.

11 THE WITNESS: I would presume so,
12 although my task was basically to explain to the
13 jury what polypropylene is, what happens to it
14 inside the human body, how it affects the
15 properties, the polypropylene, and how that might
16 impact the patient that has that material in them
17 as an implant.

18 BY MR. STEIMLE:

19 Q Have any of your -- are there any other
20 cases where you've been an expert witness or a
21 consultant where you're aware of your opinions
22 having been excluded?

23 MR. PERDUE: Form.

24 THE WITNESS: No, I am not.

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1 there, so you generally have reduced foreign body
2 response.

3 MR. STEIMLE: All right. I think we're
4 pretty much through here. I don't know if you
5 intend to do any direct exam.

6 MR. PERDUE: No.

7 MR. STEIMLE: All right then.

8 THE WITNESS: I'm serious, I'll go
9 buy everybody --

10 MR. PERDUE: We came in under the wire.
11 We'll reserve ours till the time of trial. Thank
12 you.

13 (Whereupon, the deposition of
14 JIMMY W. MAYS, Ph.D. was concluded
15 at 4:18 p.m.)

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